

DECEASED

MAR 6 1979

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MAR 2 1979

H. Stuart Cunningham, Clerk
United States District Court

THE MAGNAVOX COMPANY, a Corpor-
ation, and SANDERS ASSOCIATES,
INC., a Corporation,

Plaintiffs,

v.

FAIRCHILD CAMERA AND INSTRUMENT
CORPORATION, a Corporation,
MONTGOMERY WARD & CO., INCORPOR-
ATED, a Corporation, and SEARS,
ROEBUCK AND CO., a Corporation,

Defendants.

Civil Action No.
78 C 5041

PLAINTIFFS' MEMORANDUM IN OPPOSITION
TO MOTION TO SEVER SEARS

Fairchild moves to sever only Sears from this action, thus admitting that it and Montgomery Ward are properly joined since Wards sells television games manufactured by Fairchild. Fairchild omits one key fact. Sears and Wards sell the same television games although those games are not the one manufactured by Fairchild; they sell identical accused products which come from the same source and are thus properly joined together in this action. Severance of Sears is not appropriate.

The Defendants

Defendant Fairchild manufactures and sells a television game alleged to infringe the patent in suit under the name "Channel F". Montgomery Ward sells that game at retail. As appears from the attached affidavit of James T. Williams, one of plaintiffs' attorneys, Wards sells television games supplied by APF Electronics, Inc., Sears sells television games obtained from APF Electronics, Inc., which games are identical insofar as the issues of this action are concerned. They play the same games with the same features and are believed to have essentially identical circuitry. They emanated from the same source.

The Claims Against Sears and Wards Arise Out of the Same Series of Transactions or Occurrences

Because of the identical nature of the infringing apparatus sold by Wards and Sears and their common source, the right to relief asserted by plaintiffs against them arise out of the same "series of transactions or occurrences". That series, of course, is the successive sales by Wards and Sears of the same infringing games. The added presence of the common question of validity and infringement of the patent in suit is enough to completely fulfill the requirements of Rule 20(a), F.R.Civ.P., for permissive joinder.

The sole case cited by Fairchild, Siemens Aktiengesellschaft v. Sonotone, 370 F.Supp. 970 (N.D.Ill. 1973), simply does not support its position. The holding there was based on a specific finding that the allegedly infringing structures of the different defendants "are independently designed and manufactured and in competition with each other." 370 F.Supp., 973. That is not the case here where identical goods emanate from a common source. Thus, Fairchild has failed to demonstrate that Sears should be severed.

The purpose behind the permissive joinder provisions of Rule 20 is to promote the judicial economy inherent when multiple claims can be heard together. The Supreme Court has stated one of the purposes of the Federal Rules as follows:

"Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged." Mine Workers v. Gibbs, 383 U.S. 715, 724 (1966).

The policy behind Rule 20 in particular has been similarly stated:

"The purpose of the rule is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple law suits. * * * Single trials generally tend to lessen the delay, expense and inconvenience to all concerned." Mosely v. General Motors Corp., 497 F.2d 1330, 1332 (8th Cir. 1974).

"The purpose of this rule was not to lay a subtle snare for the unwary pleader, but rather to avoid multiple lawsuits involving similar or identical issues, except where a showing of oppression, prejudice or delay is made." Goodman v. H. Hentz & Co., 265 F.Supp. 440, 443 (N.D.Ill. 1967).

The application of that policy to the "transaction" or "occurrence" test of Rule 20 results in a liberal interpretation thereof.

"[A]ll 'logically related' events entitling a person to institute a legal action against another generally are regarded as comprising a transaction or occurrence. * * * The analogous interpretation of the terms used in Rule 20 would permit all reasonably related claims for relief by or against different parties to be tried in a single proceeding. Absolute identity of all events is unnecessary." Mosley v. General Motors, supra, 1333.

Claims for infringement of the same patent are sufficiently "reasonably related" to permit joinder. Infringement claims against two parties selling practically identical accused devices procured from the same source are even more intimately related.

It is apparent, of course, that the second test required for permissive joinder under Rule 20 is also met, the existence of common question of law or fact. The same questions of the validity of plaintiffs' patent have been raised by the pleadings of all the defendants in this case.

Severance Would Have No
Practical Consequence

Even if the claim against Sears was severed, it would make little difference to the prosecution of this action as the severed claim would certainly be consolidated with the claims against Fairchild and Wards for both discovery and trial.

First, the severed Sears claim would be assigned to the same judge hearing the Fairchild and Wards claims. General Rule 2.21 of this Court provides for assignment of "related cases" to the same judge and Rule 2.31(E)(iii) provides that civil actions involving the infringement or validity of the same patent are to be deemed related. Section A of that rule specifically contemplates consolidation of related cases.

Second, consolidation of infringement suits based on the same patent although against different defendants is the accepted and well justified practice in this district. Briggs v. M & J Diesel Locomotive Filter Corp., 228 F.Supp. 26 (N.D.Ill. 1964); American Photocopy Equip. Co. v. Fair (Inc.), 35 F.R.D. 236 (N.D.Ill. 1963); National Nut Co. of Calif. v. SuSu Nut Co., 61 F.Supp. 86 (N.D.Ill. 1945). As mentioned in plaintiffs' memorandum opposing Fairchild's motion to transfer being filed herewith, four previously filed

infringement actions on the same patent as is here in suit were consolidated for both discovery and trial. Consolidation under Rule 42(a) requires only the existence of "a common question of law or fact", and such questions would obviously be present here.

Fairchild Has Not
Shown Prejudice to It

The only attempt Fairchild has made to show prejudice or delay is at page 4 of the memorandum in support of its motion. Fairchild contends:

" . . . Fairchild and Sears have different counsel, and undoubtedly will have different pleading, different discovery, different defenses, different counterclaims, different experts, different legal issues and authority, and different trial presentations."

Why would any of these factors necessarily result in prejudice or delay to Fairchild? As to the "different counterclaims", both Sears and Fairchild have now filed their answers to the complaint, and neither includes any counterclaims. Surely there may be differences between the defendants' cases, but this without a further showing does not lead to the conclusion of prejudice.

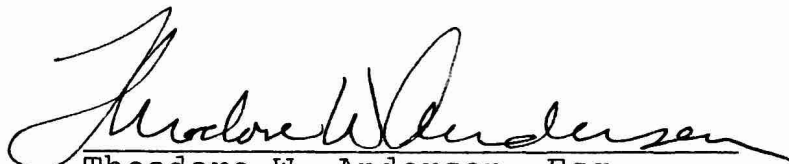
Additionally, if during the proceedings in this case it develops that substantial prejudice to any party

will be caused by the joinder of Sears, severance can then occur or separate trials under Rule 42(b), F.R.Civ.P., can be had. "It must be assumed that the trial judge will see to it that the trial will be conducted in a manner not prejudicial to the parties" American Photocopy Equip. Co. v. Fair (Inc.), supra, 35 F.R.D. 237.

CONCLUSION

Fairchild's motion to sever should be denied.

Dated: March 2, 1979



Theodore W. Anderson, Esq.
James T. Williams, Esq.
Attorneys for Plaintiffs
The Magnavox Company and
Sanders Associates, Inc.

Neuman, Williams, Anderson & Olson
77 West Washington Street
Chicago, Illinois 60602
(312) 346-1200

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE MAGNAVOX COMPANY, a Corpor-)
ation, and SANDERS ASSOCIATES,)
INC., a Corporation,)

Plaintiffs,)

v.)

Civil Action No.
78 C 5041

FAIRCHILD CAMERA AND INSTRUMENT)
CORPORATION, a Corporation,)
MONTGOMERY WARD & CO., INCORPOR-)
ATED, a Corporation, and SEARS,)
ROEBUCK AND CO., a Corporation,)

Defendants.)

AFFIDAVIT OF JAMES T. WILLIAMS

STATE OF ILLINOIS)
COUNTY OF C O O K)

I, James T. Williams, do depose and say as
follows:

1. I am an attorney admitted to practice before
the United States District Court for the Northern District
of Illinois and am one of the counsel representing plaintiffs
in the above-headed action.

2. I have personally seen at the store of Montgomery
Ward & Co. at 140 South State Street, Chicago, Illinois
television games offered for sale which games bear the marks

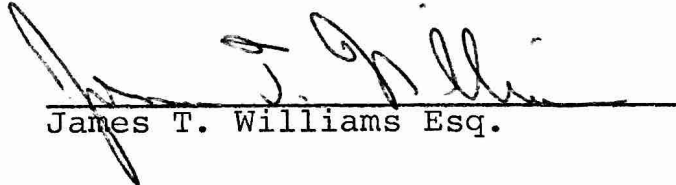
of APF Electronics, Inc. Those games have included the APF Model 401E and Model 402. Attached hereto as "Exhibit 1" is a copy of a brochure of APF Electronics, Inc. for its Model 401 television game. Attached hereto as "Exhibit 2" is a copy of a portion of a brochure of APF Electronics, Inc. for its Model 402 television games and others.

3. Attached hereto as "Exhibit 3" are true and correct copies of the front and back covers of the "Christmas 1978" catalog of Montgomery Ward and Co. offering for sale an APF television game which I believe is the APF Model 402.

4. Attached hereto as "Exhibit 4" are true and correct copies of the front cover and page 7 of the "Wish Book for the 1977 Christmas Season" catalog of Sears Roebuck & Co. offering for sale a television game under the name "Hockey-Tennis II". Attached hereto as "Exhibit 5" are true and correct copies of the front cover and page 613 of the "Wish Book for the 1978 Holiday Season" catalog of Sears Roebuck & Co. offering for sale a television game under the name Hockey-Tennis III.

5. Deposition testimony in another action in this Court, The Magnavox Company and Sanders Associates, Inc. v. Universal Research Laboratories, Inc., et al., Civil Action No. 77 C 3159, has established that APF Electronics Inc. has sold television games to Sears Roebuck, Inc. Copies of pages 1 and 89-95 of the deposition of Martin Lipper, Treasurer of APF Electronics, Inc., are attached hereto as "Exhibit 6".

6. I am generally familiar with the electronic circuitry of television games of the type referred to in paragraphs 2-4 above. I believe that, for the purposes of this action, the games referred to in paragraphs 2-4 above can be considered as substantially identical in all material respects for the purposes of this action, and, in particular, the electronic circuitry of the APF Model 401 and the Hockey-Tennis II are substantially identical in all material respects for the purposes of this action and the electronic circuitry of the APF Model 402 and the Hockey-Tennis III are substantially identical in all material respects for the purposes of this action. The exhibits hereto show that each of the referenced games are capable of playing games of the ping-pong and hockey types and have similar features.


James T. Williams Esq.

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 2ND DAY
OF MARCH, 1979.


Notary Public

My Commission Expires: 11-8-82

Lipper Dep. Ex. 2 id.
11/29/57
J.P.

introducing tv fun[®] game

model 401

Four different games —
tennis, hockey, squash,
and single handball.

Professional/Amateur
selection of ball speed,
bat size, and reflection
angle.

A.C. Adaptor socket —
for optional battery
eliminator



Realistic sound — three
different tones for score,
hit, and boundary reflection.

EXHIBIT

1

PENGAD-Bayonne, N. J.

Features and Specifications

BPF T.V. FUN[®] installs in minutes to the antenna
input of any size T.V. — black and white, or color.
Switch Box allows you to play T.V. FUN or switch to
regular T.V.

Four types of games can be played — Tennis /
Table Tennis or Hockey / Football or Squash or
Singles Handball.

Designed to be played by people of all ages
and skills — user can select:

- Bat (player) size
- Speed of ball
- Angles of deflection

- Automatic on screen scoring, up to 15 points
- Action sound — 3 different sounds occur for a
"HIT", "SCORE" and "BOUNDARY REFLECTION".
- Net and boundary lines displayed electroni-
cally on screen
- Handsome furniture styled player console — 1 or
2 players
- Operated on 6 "c" cell batteries (not included)
or Optional Battery Eliminator
- Size: 16" (W) x 7.5" (D) x 3.5" (H)
- Weight: 3 lbs.

ELECTRONICS INCORPORATED, 444 Madison Avenue, New York, N.Y. 10022 (212)758-7550

per Dep. Ex. 1 id.
11/29/77
- F.P.

APF
APF
APF
APF
APF
APF
APF
APF
APF
APF

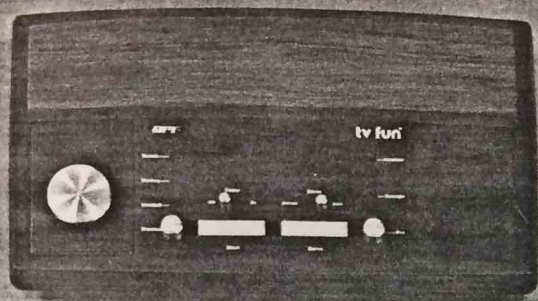
PENGAD-Bayonne, N. J.
EXHIBIT
2

ELECTRONIC PRODUCTS

VF ELECTRONICS INC., 444 MADISON AVENUE, NEW YORK, N.Y. 10022 (212) 758-7550

APF

TV FUN™ GAMES



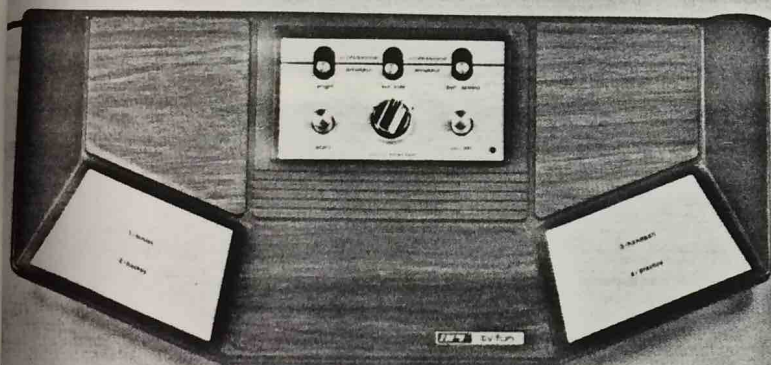
MODEL 405

- APF TV FUN 405 Plays 4 Different Games Tennis/Tabletennis, or Hockey/Football, Squash or Singles Handball
- Three Degrees of Difficulty can be Selected Amateur, Average and Professional
- On Screen Scoring
- Automatic or Manual Serve
- Handsome Furniture Styled Player Console with Remote Controls for 1 or 2 Players
- Operates on 6 'C' cell Batteries or A/C Adaptor (optional)
- Wt. 3 Lbs.
- Dimensions: L 12" x H 2" x W 6"
- Pending FCC Approval



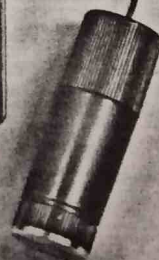
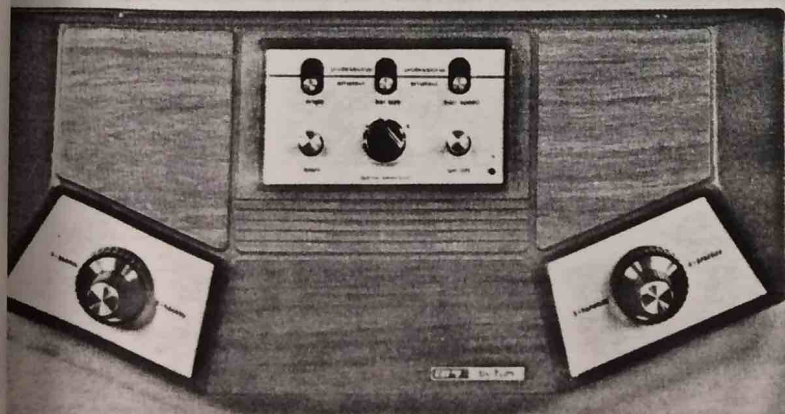
MODEL 442

- APF Model 442 TV FUN Installs in Minutes To The Antenna Input of Any Size Black/White or Color TV
- Designed To Be Played By People of All Ages and Skills. User Can Select: Bat Size—Speed of Ball—Angles of Deflection
- Plays Four Types of Games—Tennis, Hockey, Squash or Singles Handball
- Automatic Digital Type, on Screen Scoring Up to 15 Points
- Action Sound—3 Different Sounds Occur For A "Hit," "Score" and "Boundary Reflection"
- Operates on 6 "C" cells Batteries Included or A/C Adaptor (optional)
- Wt. 3 Lbs.
- Dimensions: L 16" x H 3½" x W 7½"
- FCC Approved



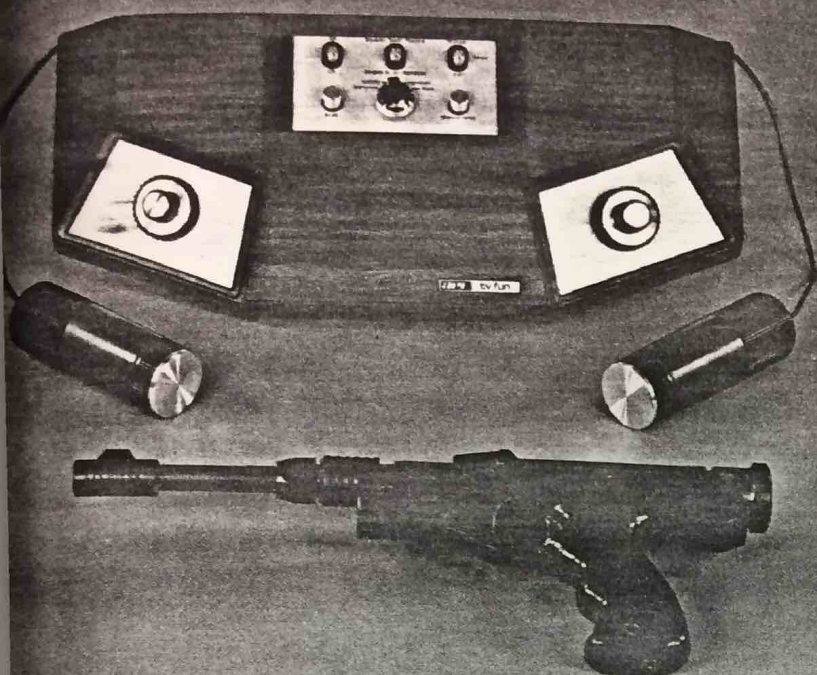
MODEL 444

- APF TV FUN Model 444 is a 4 Player Game with 2 Remote Controls
- 4 Play Fields with 8 Game Variations Tennis, Hockey, Squash or Singles Handball
- Black and White Bats For Easy Player Identification
- Net and Boundary Lines Displayed Electronically on Screen
- Action Sound, Automatic Digital on Screen Scoring Up to 15 Points
- Operates on 6 "C" cell Batteries Included or optional A/C Adaptor
- Wt. 3 Lbs.
- Dimensions: L 16" x H 3½" x W 7½"
- FCC Approved



RPF

TV FUN™ GAMES

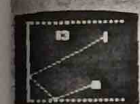


MODEL 402

TV FUN 402 is designed for the whole family. It features a selection of 8 different action games in color—Tennis (singles), Tennis (doubles), Hockey (two player), Hockey (four player), Doubles Handball, Singles Handball, Skeet Shoot and Target Shoot with pistol.

- Automatic or Manual Serve
- Action Sounds—3 different sounds occur for a "Hit" "Score" and "Boundary Reflection"
- Digital on Screen Scoring
- Color Playfield and Players for Tennis, Hockey and Handball
- Wt. 3 Lbs.
- Dimensions: L 16" x H 3½" x W 7½"
- FCC Approved

8 EXCITING SPORTS GAMES



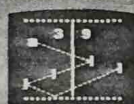
Handball
(Singles)



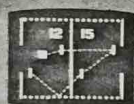
Handball
(Doubles)



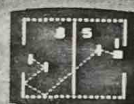
Tennis
(Two Player)



Tennis
(Four Player)



Hockey
(Two Player)



Hockey
(Four Player)



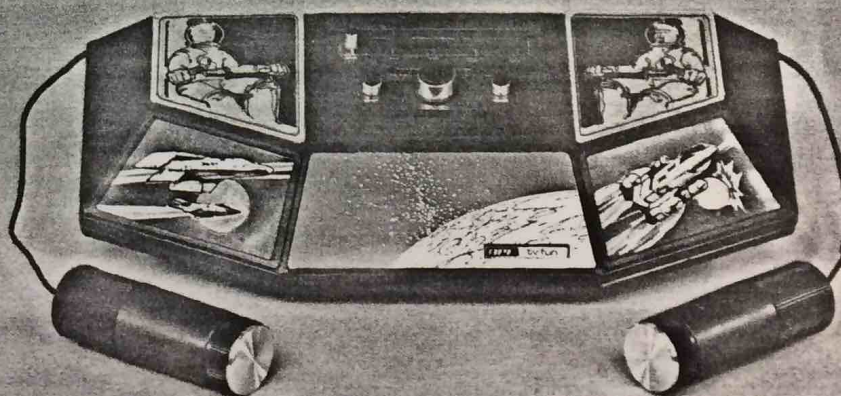
Target Shoot
(W/Pistol)



Skeet Shoot
(W/Pistol)

MODEL 500

Different Space Games including Space War, Space Phasor, Phantom, Phantom Phasor, Guided and Direct Missiles, Slow and Fast moving Asteroids, Spring and Non-scoring Asteroids, Phantom Rocket Ships, Star Fields, Rockets and Asteroids on a color T.V.
Complex exploding sound and color change when a hit is made.
Digital on Screen Scoring.
Operates on A/C or Batteries—Batteries included.
Dimensions: L 16" x H 3½" x W 7½"
FCC Approval



20 EXCITING SPACE BATTLE GAMES

MONTGOMERY
WARD

CHRISTMAS 1978

PENGAD-Bayonne, N. J.

EXHIBIT

3

INDEX 296

nightwear 154, 155,
clock 198,
chair 1086, Fall Big Book,
credit 292

**SATISFACTION
GUARANTEED**

APF 4 PLAYER COLOR TV GAME

with remote controls for 1, 2, or 4 players!
8 action-packed games **INCLUDING** 2 moving
target games where you shoot a light-beam pistol!

1/2 PRICE

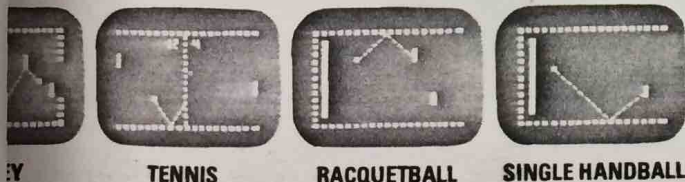
WARDS
UNBELIEVABLE
LOW PRICE

27⁸⁸

Was 59.88



**All 8 exciting video games
included right in the unit—no
need to buy any extra cartridges!**



TV

TENNIS

RACQUETBALL

SINGLE HANDBALL

- ★ Plays on any black & white or color TV set!
- ★ Installs in minutes by attaching to antenna.
- ★ Will not interfere with normal TV reception.

APF electronic TV color games can be played by 1, 2, or 4 players! Unit includes 2 fun-filled target shooting games where you shoot a beam of light from a polypropylene pistol toward a randomly moving target on the TV screen. Play action produces 3 distinct sounds—top/bottom rebounds, hits and scores. Start game by pressing the reset button, ball is automatically served and on-screen score display set to zero. Colorful green playfield for players of tennis, hockey, racquetball or single handball. *Tennis for 2 or Tennis for 4* proceeds just like the real game. *Hockey for 2 or Hockey for 4* gives each player or side a goalie and forward independent of each other. *Racquetball* is played on 3-sided court. *Single Handball* is practice for one person. *Skeet Shoot* and *Target Shoot* are 2 pistol-shooting games that appear in black & white on screen. *Skeet Shoot* provides a target constantly moving on the screen. When a shot is taken, the target will disappear from the screen and the score will appear indicating a hit or miss. *Target Shoot* provides a target that appears randomly on the screen for a duration of 15 seconds. Scored the same as *Skeet Shoot*. Eight different game combinations plus controls for bat size, angle degree, and ball speed give you more than 50 total game combinations! Remote control attachments enable you to play while relaxing in an easy chair! Television not included, order on pages 19, 308-311. Requires AC house current adapter (not included, order below) or 6 "C" cell batteries (not included, order below). Unit was 59.88 in '77 Christmas Book, page 434.

60 G 95016—Ship. wt. 4 lbs. Now only 27.88
60 G 95041—AC adapter. Use with house current (115v. AC). Wt. 1 lb. ... 5.95
60 G 75016—"C" cell alkaline batteries 2 pkgs. of 2. Wt. 12 oz. 2.69

More electronic games in this book on page 340

MONTGOMERY WARD, 618 W. Chicago Ave. Chicago, IL 60607

**APF TV game also
includes 2 pistol-
shooting target games!**



1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 -----X

5 THE MAGNAVOX COMPANY and :
6 SANDERS ASSOCIATES, INC., :

7 plaintiffs, :

8 vs. : 77 C 3159

9 APF ELECTRONICS, INC., et al, :

10 Defendants. :

11 -----X

12 Deposition of defendant APF ELECTRONICS,
13 INC., by MARTIN LIPPER, taken by plaintiffs,
14 pursuant to notice dated November 16, 1977,
15 and held at the offices of Blum Moscovitz
16 Friedman & Kaplan, Esqs., 730 Third Avenue,
17 New York, N. Y., on November 29, 1977, at
18 10:00 a.m., before Florence E. Parrella, a
19 Certified Shorthand Reporter and Notary Pub-
20 lic of the State of New York.

21

22

23

24

25



Q The Hong Kong companies?

A Yes.

Q And any others just in case --

A And that was answered previously in one of your questions.

Q I don't have the record to refer to, but I had hoped my prior question would have brought out APF Japan Limited and it did not for some reason.

A I forgot it existed. I am not trying to walk around you. I can't even remember the thing of that, when it was in existence.

Q In Exhibit 3-A there is reference to a product called ~~Hockey~~ Tennis II. Is that one of the products shown in Lipper Exhibit 1?

A That is actually one of the products shown, but it is under a Sears label.

Q And which one of the products is the product that is labeled ~~Hockey~~ Tennis II?

A May I see the item?

Q Sure. I hand you Exhibit 3-A (handing).

A I am pretty sure it was model 444.

Q Now, the date on Exhibits 3-A and 3-B ^{seems} ~~is~~ ~~deemed~~ to have been blocked out or at least are unclear. When did APF Electronics first sell to Sears

in Chicago?

A The TV games?

Q The TV games, I am sorry.

A It would have to be after we received the FCC, which would be June of 1976.

Q Have sales to Sears in Chicago been on a continuing basis from then and up to date?

A We sold them last year and we have sold them some games this year.

Q Is T.F. Quinn the Sears buyer with whom the Hirsches and you people meet in the course of selling to Sears?

A Yes.

Q And is he located in Sears Tower in Chicago?

A Yes.

Q Has Hirsch or APF had any dealings with any other buyer or buyer organization of Sears with respect to TV games, other than Mr. Quinn and his group in Chicago?

A Well, calculators.

Q No, on TV games.

A No, Mr. Quinn is the buyer for TV games.

Q When did Mr. Hirsch first call on Mr.

Quinn or someone who works with Mr. Quinn at Sears with respect to TV games?

A I wouldn't know that.

Q Is there a file that APF maintains with respect to the Sears business relationship, one or more files?

A A file on the orders that we receive, and when you would have to write a letter at varying times, once in a while.

Q They are kept in a separate file, I take it, apart from the sales department's purchase order file on all sales of the company?

A Not necessarily.

Q There have been letters and correspondence between Sears and persons representing APF with respect to the sales of TV games to Sears, have there not?

A I am sure.

Q Were any of those letters written or received by the Hirsch organization?

A I would not know.

MR. ANDERSON: Well, Mr. Kaplan, I would like to see any correspondence that has transpired between Sears and anyone on behalf of APF with respect to the questions of sales or sales of TV games to

Sears.

MR. KAPLAN: I don't see how that is relevant on the issues in this proceeding.

MR. ANDERSON: I think I am entitled to see them, whether they are relevant or may lead to admissible evidence on the issues of venue, I think very clearly we established without question infringing acts of APF in Illinois and a very substantial amount of activity in Illinois.

Now we are narrowing down on the issue of exactly what that activity was, who was responsible for it, and the relationship between Hirsch and Salky and APF, and I think we are entitled to it.

MR. KAPLAN: I don't think it is relevant, but in the interests of expediting this thing, to the extent it does not disclose confidential information, we will make this available to you.

MR. ANDERSON: All right, I will add that. For the time being certainly, as Mr. Lipper apparently did on these documents, I don't object to the deletion of the number of units or the dollars involved.

MR. KAPLAN: That is what I am primarily concerned about.

MR. ANDERSON: I would like to limit

expurgation to that, if at all possible.

MR. KAPLAN: Thus limited, we will comply.

Q It is my understanding, Mr. Lipper, you never personally called on anyone at Sears with respect to the sale of TV games to Sears; is that correct?

A That is correct.

Q Do you know whether or not there was at any time a discussion between Mr. Quinn or any representative of Sears with one of the Hirsches or anyone from APF with respect to the patent indemnity clause which appears under the heading "Indemnity" on the back side of the Sears contract as shown in Exhibit 4-C?

A I wouldn't know.

Q Do you know whether there was ever any discussion of patents or patent rights with anyone at Sears?

A No, I wouldn't know that.

Q On Exhibit 4-A there is reference to ~~Hockey~~ Jokari. What is ~~Hockey~~ Jokari, if you know?

A That is one of our regular models, Sears label.

Q And which of your regular models is that?

1 A I believe it is the 444.

2 Q Is that the same then as Hockey Tennis II,
3 which I think you said was the 444?
4

5 A I am not sure. It is conceivable, though,
6 that this one could refer to the new piece, the 405,
7 which was this year, 1977.

8 Q That is the Jokari may refer to the 405?

9 A The 405.

10 Q I would like to have you look at Lipper
11 Deposition Exhibit 5. Is that also a form used in
12 dealing with Sears Roebuck & Company?

13 Q Yes, that would be.

14 Q Paul E. Wolf, who signed it, is the Sears
15 buyer for calculators, is he?

16 A Yes.

17 Q And is he located in Chicago, Illinois?

18 A Yes.

19 Q In Sears Tower?

20 A Yes.

21 Q The document is countersigned by what appears
22 to be Howard Boilen, is that correct?

23 A That is correct.

24 Q And under his signature is typed "APF
25 Electronics USA agent." Agent for whom is that?

1 fpmf
2 A APF.

3 That was a direct shipment from the Orient
4 to Sears.

5 Q From the Orient to Sears?

6 A Yes.

7 Q Are TV games direct shipped from the Orient
8 to Sears also?

9 A No.

10 Q How are TV games handled?

11 A It is possible at times we could direct
12 ship from the Orient.

13 Q With respect to TV games how are they
14 handled?

15 A I am just answering you. It is possible
16 some of them were direct shipped from the Orient.
17 Otherwise they go into our warehouse and they are
18 shipped out against orders received from the individual
19 stores.

20 Q And when you receive orders from the in-
21 dividual stores, are the games shipped directly to the
22 individual stores?

23 A They are shipped FOB our warehouse to the
24 Sears consolidator.

25 Q And is that either the warehouse in Los

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION TO SEVER SEARS and AFFIDAVIT OF JAMES T. WILLIAMS was served by hand delivering same to:

Granger Cook, Jr., Esq.
Cook, Wetzel & Egan, Ltd.
135 South La Salle Street
Chicago, Illinois 60603
Attorneys for Fairchild Camera and Instrument Corporation

and by mailing a copy thereof as first class mail, postage prepaid to:

Alan W. Brothers, Esq.
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all on this 2nd day of March, 1979.


James T. Williams, Esq.